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OCT. 28 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Section 255 of )  
the Telecommunications Act of 1996 )

Access to Telecommunications Services, )  
Telecommunications Equipment, and )  
Customer Premises Equipment By Persons )  
With Disabilities )

WT Docket No. 96-198

DOCKET FILE COPY ORIGINAL

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its comments on the Notice of Inquiry ("NOI"), FCC 96-382, released September 19, 1996 in the above-captioned proceeding.

**I. INTRODUCTION**

Section 255 to the Communications Act, 47 CFR §255, which was added by the Telecommunications Act of 1996, seeks to bring the anticipated benefits of increased competition in the telecommunications market to individuals with disabilities. By its terms, both manufacturers of telecommunications equipment or customer premises equipment (CPE) and providers of telecommunications services must ensure that their respective products and services are accessible to and usable by individuals with disabilities, if readily achievable. 47 USC §255(b) & (c).

Sprint agrees that the "40 million Americans with disabilities are entitled to share fully in the benefits of

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telecommunications services and equipment that are becoming such an essential element of the our educational, social, political and economic future." Statement of Chairman Reed E. Hundt attached to *NOI* at 1. Indeed, Sprint is committed to ensuring that those with disabilities receive high quality telecommunications services. Through its operating subsidiaries, Sprint has long devoted -- and continues to devote -- substantial resources to meeting the communications needs of its deaf, hard-of-hearing, late-deafened adult and speech disabled customers. Sprint is now the leading provider of telecommunications relay services ("TRS") in the United States and has been in the forefront in bringing several service enhancements to the TRS marketplace, including Video Relay Interpreting and TTY Operator Service.<sup>1</sup>

Of course, the ability of customers with hearing and speech disabilities to take advantage of Sprint's innovative TRS service offerings or, customers with other disabilities to use any of Sprint's services, requires that telecommunications equipment and CPE be designed and developed to permit access to Sprint's

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<sup>1</sup> Video Relay Interpreting is for those relay users who prefer to communicate using American Sign Language (ASL). TTY Operator Service offers to TTY users the types of operator services which those in the hearing community take for granted including operator-assisted calls virtually anywhere in the world; the ability to place collect, person-to-person, billed to third party calls; directory assistance; the ability to obtain immediate credit for wrong numbers dialed.

network. Thus, the initial -- and perhaps primary -- responsibility for ensuring that individuals with disabilities gain such access and the capability to utilize a carrier's services lies with equipment manufacturers. Congress appears to have recognized this fact since Section 255 places great emphasis on ensuring the availability of accessible telecommunications equipment and CPE. It has required that manufacturers of such equipment take accessibility concerns into account when designing, developing and fabricating their equipment, 47 USC §255(b). Moreover, Congress has charged the U.S. Architectural and Transportation Barriers Compliance Board ("Access Board") with the mandate "to develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission" by August 1997. 47 USC 255(e).

Given such emphasis, the Commission is correct to have issued an NOI whose "principal objective ... is to develop a record to assist the Access Board in the development of accessibility guidelines for equipment and CPE." NOI at ¶4. Sprint can be of little help in this regard. None of Sprint's subsidiaries designs, develops or fabricates telecommunications equipment or CPE.

However, the Commission's NOI also seeks comments on various issues that could impact Sprint's provision of services to its customers with disabilities. Generally such issues involve defining the duties imposed upon equipment and service providers

under the new provision as well as establishing the mechanisms for the Commission to enforce such duties. Sprint understands that these issues in the context of services for persons with disabilities will receive more extensive treatment in a Notice to be issued by the Commission in the near future. See Draft FCC Implementation Schedule for the Telecommunications Act of 1996 released May 22, 1996 at 4. Sprint expects to fully participate in that upcoming proceeding. In its Comments here, Sprint will briefly set forth its preliminary views on the various issues to the extent that they are applicable to service providers.

## **II. DISCUSSION**

### **A. A "Telecommunications Service Provider" Is The Same As A "Telecommunications Carrier."**

The Commission points out the term "provider of telecommunications services" as used in Section 255(c) is not defined in the Act and questions whether "further clarification or definition" of the term is necessary. NOI at 18. The answer to such question is no. Although a "provider of telecommunications services" may not be explicitly defined in the Act, the term is used to define a "telecommunications carrier." See 47 U.S.C. §153(44). Thus, it is clear that a "provider of telecommunications services" and a "telecommunications carrier" can be -- and in the case of Section 255 are -- used interchangeably.

**B. Information or Enhanced Services Are Not Covered By Section 255(c) of the Act.**

It is also clear that such carrier or provider is, under the express terms of Section 255(c), required only to ensure that readily achievable "telecommunications services" and not that other types of services, e.g., information or enhanced services, are accessible to and usable by individuals with disabilities. Under Section 3(46) of the Act, the term "telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public ...regardless of the facilities used." The definition of the telecommunications is "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Both information services as defined in Section 3(20) of the Act and enhanced services as defined in Section 64.702(a) of the Commission's Rules, 47 CFR §64.702(a), involve the provision of restructured information. Thus, information services and enhanced services are not "telecommunications services" and are not covered by the mandate of Section 255(c).<sup>2</sup>

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<sup>2</sup> The Commission recognizes that certain services "do not fall within the statutory definition of telecommunications services." NOI at ¶9. Nonetheless, the Commission states that the definition of CPE in the Act (47 USC §153(14)) "does not appear limited to equipment used in conjunction with 'telecommunications services'" and thus it seeks comment on the treatment of CPE which can be used to provide both telecommunications services and other types of services. *Id.* Regardless of how the Commission

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**C. A Cost/Benefit Analysis Should Be Employed In Applying The "Readily Achievable" Standard Of Section 255.**

In the NOI (at ¶16), the Commission asks for comments on what factors it should consider in determining whether accessibility to telecommunications equipment and services by those with disabilities is "readily achievable." Section 255(a)(2) provides that the definition of the term "readily achievable" is the same as set forth in the Section 301(9) of the Americans with Disabilities Act of 1990 ("ADA"). 42 U.S.C. §12181(9). The ADA definition focuses upon whether the desired action can be carried out easily and without much expense. It requires an examination of such factors as "nature and cost of the action needed," the type of operations of the covered entity, and the financial resources of the covered entity. Given the focus of the ADA definition, any determination by the Commission as to whether accessibility to a service is "readily achievable" must, at a minimum, be based upon a comparison of the costs of making a particular service accessible to individuals with disabilities with the projected utilization of the service. It makes no sense as a matter of economics to require carriers to

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ultimately decides this issue, Sprint would emphasize that the fact that a customer is able to use his CPE to obtain both telecommunications services and information services does not mean that the Commission is empowered to require that providers of telecommunications services to ensure that information services are accessible to and usable by individuals with disabilities. The Commission cannot accomplish through a "back door" approach what clearly has not been required by Congress.

expend resources to develop a technology necessary to permit such individuals access to a particular service if their usage of such service is likely to be *de minimis* and where less expensive alternatives to such service are available in the market.

Carriers, of course, constantly engage in cost/benefit analyses in deciding whether to develop new and innovative services. They weigh the cost of such innovation against a determination of whether the new service offering is likely to enable them to differentiate themselves in the competitive marketplace, promote greater or more efficient usage of their services and increase their market share. Indeed, Sprint developed Video Relay Interpreting and TTY Operator Service to enhance its TRS product not only for the benefit of TRS users, but also to improve its chances of being selected by the various States to operate their TRS centers as their current contracts expire and are re-bid. It did not do so because of any government mandate that such services be offered.

Moreover, the Commission appears to recognize that it may be difficult "to apply the 'readily achievable' standard in a way that will take advantage of market and technological developments, without constraining competitive innovation." NOI at ¶16. Sprint agrees. The best way to encourage "competitive innovation," is to enable the carrier which expended the resources in developing a new service to enjoy the fruits of its efforts. If the carrier knows that its competitors will be

required by the Commission to offer the same innovative service under the "readily achievable" standard of Section 255, it may be less likely to engage in such development. And, its competitors may be less willing to seek to improve upon any innovative service offering which the carrier does introduce in the market. They will simply duplicate the carrier's offering since by doing so they will have met the Commission's requirements without expending significant resources.

Sprint does not suggest here that the Commission leave it to the market to ensure that new and innovative services are made available to individuals with disabilities. The Commission's responsibilities under Section 255 do not appear to allow for such a "hands off" approach. Sprint suggests that the Commission enforce the obligations imposed by Section 255 upon service providers on a case-by-case basis. The prescription of rules, use of guidelines or policy statements, all of which are suggested by the Commission as ways to enforce Section 255, (see NOI at ¶¶ 7 & 29-34) may hinder the carriers' ability to efficiently provide services not only to individuals with disabilities but also to the population at large.<sup>3</sup> For example,

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<sup>3</sup> Sprint's comments as to whether accessibility guidelines should be adopted apply only to services. Obviously, Section 255(e) requires the development of guidelines for accessibility of telecommunications equipment and CPE. In this regard, Sprint believes that the Commission's Part 68 program is an appropriate model for enforcing Section 255. Thus, a manufacturer would have to certify that its network equipment and CPE meets the

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if guidelines were imposed, a carrier seeking to introduce a new service presumably would have to file some sort of statement demonstrating whether the service met the guidelines. Such statement would be subject to Commission review and perhaps challenge by interested parties, either of which would delay the provision of the service by the carrier. Sprint does not believe that the legitimate goal of ensuring access to telecommunications services by individuals with disabilities should serve to impede carriers' efforts to introduce new services into the marketplace. If persons with disabilities believe that they have been denied access to a service offered by a carrier because of such

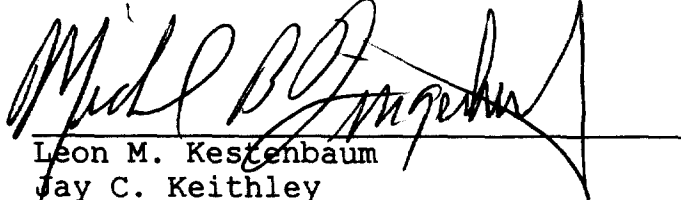
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established guidelines. Carriers, like Sprint's operating subsidiaries, would then be able to install the network equipment or distribute the CPE in reliance upon such certification.

disabilities, they should attempt to secure relief through either the Commission's formal or informal complaint processes.<sup>4</sup>

Respectfully submitted,

SPRINT CORPORATION

A large, stylized handwritten signature in black ink, appearing to read "Michael B. Fingerhut", is written over a horizontal line.

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October 28, 1996

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<sup>4</sup> The Commission might wish to consider modifying its formal complaint process for those claiming a Section 255 violation in order to reduce costs for the complainant and perhaps expedite Commission consideration of the complaint.

**CERTIFICATE OF SERVICE**

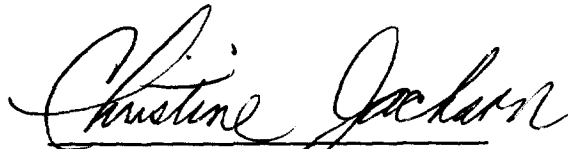
I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 28th day of October, 1996 to the below-listed parties:

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October 28, 1996